

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

DAVID KIRKLAND

Crim. No. 06-911 (KSH)

Hon. Katharine S. Hayden

OPINION AND ORDER

Defendant David Kirkland has moved for an order reinstating bail, supporting his motion with a brief filed on his behalf by counsel [D.E.#176] and an assessment written by a mental health professional who has been seeing him at the Hudson County Jail, where Kirkland is detained pending sentencing. The Government has filed a response. [D.E. #177]

The Court has reviewed these submissions. The Government's brief accurately outlines the procedural history of defendant's pretrial release, the subsequent revocation of bail, and his efforts to get bail reinstated prior to trial. The Third Circuit has affirmed this Court's order [D.E. #100] denying reinstatement of bail. This all preceded defendant's conviction by a jury, which increased the burden on him to justify reinstatement of bail.

The burden is significant: David Kirkland must make a clear and convincing showing that he poses neither a flight risk nor a danger to the community, otherwise the Court must detain him. From the statute:

[T]he judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence ... be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released ...

18 U.S.C. § 3143(a).

David Kirkland has been convicted of crimes that imperil the public; he has a criminal history of committing similar crimes; he faces a significant prison term. The information presented by the mental health professional who is providing treatment does not constitute clear and convincing evidence that would overcome the requirement that he be detained under the present circumstances.

Based on the foregoing, the motion to reinstate bail pending sentencing is **denied**.

SO ORDERED.

/s/Katharine S. Hayden

Hon. Katharine S. Hayden
United States District Judge